

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DALBERT DELLAPENA,

CIVIL ACTION

Plaintiff,

No.:

v.

JEROME STRAYHAM and AH GARDNER
& SONS INC.,

Defendants.

NOTICE OF REMOVAL

AND NOW, come the Defendants, Jerome Strayham and A. H. Gardner & Son, Inc., (incorrectly identified as AH Gardner & Sons Inc.) by and through their counsel, Pion, Nerone, Girman, Winslow & Smith, P.C., and John T. Pion, Esquire, and Todd R. Brown, Esquire, to remove the above-captioned lawsuit pursuant to 28 U.S.C. § 1441, *et seq.* from the Court of Common Pleas of Allegheny County, Pennsylvania (Civil Division Docket No. GD-18-014266), to the United States District Court for the Western District of Pennsylvania, and in support thereof, aver as follows:

1. Plaintiff initiated this lawsuit in the Court of Common Pleas of Allegheny County, Pennsylvania (Civil Division Docket No. GD-18-014266) (Copies of the docket and all pleadings and process filed in the state court action are attached hereto as Exhibit "A").

2. The Complaint names as Defendants, Jerome Strayham and AH Gardner & Sons Inc., and alleges that on November 11, 2016, Defendants' negligence caused a motor vehicle accident that resulted in personal injuries to Plaintiff for which he seeks damages, including, but not limited to, right rotator cuff syndrome, medial meniscus tear of the right knee, and right lumbar injury (Complaint ¶ 12).

3. Per the Complaint, Plaintiff alleges that as a result of his injuries, he suffered great pain, suffering, inconvenience, embarrassment, mental anguish, and emotional and psychological trauma (Complaint ¶ 13(a)).

4. Per the Complaint, Plaintiff alleges that as a result of his injuries, he suffered “lost earnings, and decedent’s [sic] earning capacity has been permanently impaired (Complaint ¶ 13(b)).

5. Per the Complaint, Plaintiff alleges that as a result of his injuries, he suffered the inability to enjoy certain pleasures of life that were previously enjoyed (Complaint ¶ 13(c)).

6. Per the Complaint, Plaintiff alleges that as a result of his injuries, he suffered permanent loss and impairment of general health, strength, and vitality (Complaint ¶ 13(d)).

7. Per the Complaint, Plaintiff is a resident of McKeesport, Pennsylvania (Complaint ¶ 1).

8. Per the Complaint, Defendant Jerome Strayham is a resident of Baltimore, Maryland (Complaint ¶ 2).

9. Per the Complaint, Defendant AH Gardner & Sons Inc., is a Maryland corporation with a principal place of business in Baltimore, Maryland (Complaint ¶ 3).

10. The above-captioned action, pending in the Court of Common Pleas of Allegheny County, Pennsylvania is within the jurisdiction of the United States District Court for the Western District of Pennsylvania.

11. The United States District Court for the Western District of Pennsylvania has original jurisdiction over this action pursuant to 28 U.S.C. § 1332 inasmuch as the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and is between citizens of different states.

12. This action is removable from the Court of Common Pleas of Allegheny County pursuant to the provisions of 28 U.S.C. § 1441, *et seq.*

13. Concurrent with the filing of this Notice of Removal, Defendants have filed a Notice of Filing of Notice of Removal with the Allegheny County Prothonotary, advising that they have removed this action to the United States District Court for the Western District of Pennsylvania

14. In filing this Notice of Removal, Defendants Jerome Strayham and A. H. Gardner & Son, Inc. do not waive any affirmative defenses they may assert in this action.

WHEREFORE, Defendants, Jerome Strayham and A. H. Gardner & Son, Inc., pray that this Honorable Court remove the above-captioned case from the Court of Common Pleas of Allegheny County, Pennsylvania to the United States District Court for the Western District of Pennsylvania.

JURY TRIAL DEMANDED.

PION, NERONE, GIRMAN,
WINSLOW & SMITH, P.C.

By: /s/ Todd R. Brown, Esquire
TODD R. BROWN, ESQUIRE
Attorney I.D. No. 87345
Attorneys for Defendants,
Jerome Strayham and A. H. Gardner & Son,
Inc

CERTIFICATE OF SERVICE

I, Todd R. Brown, Esquire, hereby certify that a true and correct copy of the foregoing NOTICE OF REMOVAL was served upon counsel of record via CM-ECF electronic mailing and first-class, U.S. Mail, this 8th day of November, 2018, as follows:

G. Christopher Apessos, Esquire
FRIDAY & COX, LLC
1405 McFarland Road
Pittsburgh, PA 15216
capessos@fridaylaw.com

Attorneys for Plaintiff

PION, NERONE, GIRMAN,
WINSLOW & SMITH, P.C.

By: /s/ Todd R. Brown, Esquire
TODD R. BROWN, ESQUIRE
Attorney I.D. No. 87345

*Attorneys for Defendants,
Jerome Strayham and A. H. Gardner & Son,
Inc*